

SUBJECT: DRUG-FREE WORKPLACE ACT OF 1988

1. Purpose: To update policies and procedures for implementing the Drug-Free Workplace Act requirements in CH Contracts and Grants.
2. Effective Date: Upon Issuance
3. References:
 - a. Public Law 100-960.
 - b. FAR Subpart 23.5.
 - c. FAR Subpart 52.2 (certification and clause).
 - d. 10 CFR 707
 - e. DEAR 970.2305
 - f. DEAR 923.5
 - g. DEAR 909.104-1
4. Supersedes: Policy and Procedure 90-5 and FAH 90-6, dated July 27, 1990, in its entirety.
5. Applicability: All CH acquisition and assistance activities. The requirements of the Drug-Free Workplace Act of 1988 applies to contracts not specifically within the scope of 10 CFR Part 707, Workplace Substance Abuse Programs at DOE Sites.
6. Procedures:
 - a. Contracts
 - (1) New Awards: The current "Contractor Certification" at FAR 52.223-5 shall be obtained for all new awards with the offerors proposal or if not included in the solicitation then prior to award when the following conditions exist:
 - (a) A contract is awarded to an individual at any dollar value; or
 - (b) a contract is expected to be awarded to other than an individual equal to or exceeding \$25,000 (if the exact dollar value is not known, then an estimate will be used).

In addition to the Certification, the current "Drug-Free Workplace" clause (FAR 52.223-6), contained in both the CRDC and CRDNP sets of General Provisions, shall be included in award instruments.

- (2) Existing Awards: With any new commitments awarded, the "Contractor Certification" (FAR 52.223-5) shall be obtained. For existing contracts, "new commitment" shall be defined as changes in scope, and/or increases in the estimated cost or fee. A no-fund extension is not considered a new commitment. In addition, the clause at FAR 52.223-6 shall be included in the contract.
- (3) Management and Operating (M&O) Contracts: These contracts now fall within the scope of 10 CFR Part 707, Workplace Substance Abuse Programs at DOE Sites, and shall contain the appropriate clause (970.5204-58) and contractors shall submit the certification at 970.5204-57.
- (4) Solicitations: Section K of the solicitation shall contain the Certification (52.223-5) and the contract shall contain the clause at FAR 52.223-6 in Section I of the solicitation. This clause has been revised in the CRDC and CRDNP sets of the General Provisions.

NOTE: If the procurement awards involve work that will be performed at DOE-Owned or -Leased Sites, then the requirements of 10 CFR Part 707, Workplace Substance Abuse Programs at DOE Sites, shall apply instead of the Drug-Free Workplace Act.

b. Grants

- (1) New Awards: The Grantee Certification (available in the forms bins) shall be obtained for all new awards. For the purpose of this procedure, all renewals are to be considered new awards. Instructions for Grantee Certification are available in the form bins.
- (2) Existing Awards: The grantee is not required to make a certification in order to continue receiving funds under a grant or under a no-cost time extension of such a grant.
- (3) Grants with States: Grantees that are States may elect to make one certification in each Federal Fiscal Year. The State shall retain the original of this state-wide certification in its Governor's office and, prior to grant award, shall submit a copy with each grant.

The Governor of a State may exclude certain state agencies from the state-wide certification and authorize those agencies to submit their own certifications to Federal agencies.

7. Exceptions:

a. Contracts

- (1) Contracts or those parts of the contracts that are to be performed outside of the United States, its territories, and its possessions; or
 - (2) Contracts by law enforcement agencies, if the head of the law enforcement agency or designee involved determines that application of this subpart would be inappropriate in connection with the law enforcement agency's undercover operations; or
 - (3) Where application would be inconsistent with the international obligations of the United States or with the laws and regulations of a foreign country; or
 - (4) Contracts valued below \$25,000; however, the requirement shall apply to contracts of any dollar value if the contract is awarded to an individual.
- b. Grants

Where application would be inconsistent with the international obligations of the United States or the laws and regulations of a foreign government.

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